

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:06CR19
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
JUAN VARGAS,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") and the parties' objections thereto (Filing No. 135, Addendum).¹ See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The government objects to the lack of a 2-level downward role adjustment in ¶ 35 for a minor role as contemplated by the parties in reaching the plea agreement. The Court's tentative finding is that the objection is granted.

The Defendant objects to ¶ 67, which states that the sentencing guideline range becomes 120-121 months due to the 10-year statutory minimum. The Court is bound to apply the statutory minimum sentence unless the Defendant qualifies for the safety valve. As the Defendant does not qualify for the safety valve, the objection is denied.

IT IS ORDERED:

1. The government's objection (Addendum) is granted;

¹The government did not file objections pursuant to ¶ 6 of the Order on Sentencing Schedule.

2. The Defendant's objection to the Presentence Investigation Report (Filing No. 135) is denied;

3. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

5. Absent submission of the information required by paragraph 4 of this Order, my tentative findings may become final; and

6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 31st day of October, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge